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Supreme Court, U.S.
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No. 09-1178

IN THE

SUPREME COURT OF THE UNITED STATES

JEREMY SMITH,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the Florida First District Court of Appeal

PETITIONER'S REPLY MEMORANDUM

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B. ARGUMENT

The State of Florida (hereinafter "the State"), in its opposing brief, attempts to minimize the findings in Dr. Rothschild's report, arguing that the report was preliminary and that Dr. Rothschild had not formed a final conclusion regarding the Petitioner's competency to enter his guilty plea. (Brief in Opp., pp. 10-12). A review of Dr. Rothschild's report demonstrates that Dr. Rothschild had not yet finalized his report because he had not received/reviewed medical records from the Petitioner's jail (Pet. App. 4a-5a)[1] – documents that were never provided to Dr. Rothschild despite the Petitioner's motion to compel the production of the records. The State's argument is a red herring – it is

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[1] References to the appendix to the petition for writ of certiorari will be made by the designation "Pet. App." followed by the appropriate page number and the letter "a."

undisputed that in his report, Dr. Rothschild opined:

> Due to his severe mental illness and possible lack of treatment at the time, *I have significant concerns about the defendant's competency to proceed when he changed his plea to guilty on July 28, 2006.* Prior to the plea change, Mr. Smith was evaluated by a forensic psychologist, William Meadows, Ph.D., on November 11, 2005, December 22, 2005, and June 6, 2006. Dr. Meadows opined that at the time of the evaluations, the defendant was competent to proceed. *However, Dr. Meadows was not aware* if and what psychotropic medications the defendant was taking at the times of the evaluations or *if antipsychotic medications were continued or stopped prior to the plea change.* The defendant's family stated that Duval County Jail healthcare providers prescribed medications to treat Mr. Smith's mental illness, but they were stopped prior to his plea change. *A few days after Mr. Smith changed his plea, when he entered the Department of Corrections, Mr. Smith was floridly psychotic with disorganized thoughts, hallucinations, and delusional thinking (a mental state incongruent with competence to proceed in court).*

(Pet. App. 10a-11A) (emphasis added).

Next, the State argues that the trial judge conducted a "detailed" plea colloquy with the Petitioner, and the State asserts that the Petitioner's answers to the trial judge's questions were "responsive, unambiguous, and appropriate to the questions posed." (Brief in Opp., p. 27). Notably, in the excerpt quoted by the State, the Petitioner gave forty-one answers, and thirty-seven of these answers were "Yes," "Yes, sir," or "No." (Brief in Opp., pp. 13-26).[2] The Petitioner submits that these rote responses were insufficient to establish that the Petitioner was competent[3]

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[2] The Petitioner's remaining four answers were "Forty," "Ten," "Yes, sir, I realize that," and "Bachelor's degree." (Brief in Opp., pp. 20-21).

[3] *See, e.g., State v. Cameron*, 704 P.2d 1355, 1358 (Ariz. Ct. App. 1985) ("The questioning of appellant by the judge prior to the judge's acceptance of the waiver of the jury trial indicates that the appellant spoke no more than 'Yes, sir,' and 'Yes, your Honor,' in response to the questions posed by the court.").

especially in light of the warning signs that were ignored by the trial court, such as the Petitioner's "severe" mental health issues, the Petitioner's failure to take his medications at the time of the guilty plea,[4]

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[4]During the plea hearing, defense counsel stated the following regarding the Petitioner's psychotropic medications:

> [DEFENSE COUNSEL]: Yes sir. I think he has had some *severe* mental health issues. They have had him seen by a doctor, the doctor has told us that he is competent.
>
> Also, Mr. *Smith probably up to about two and a half months ago had been taking some psychotropic medications at the jail. He has been taken off those psychotropic medications, and he is not on any medications at this time.*
>
> THE COURT: And that was at the doctor's direction?
>
> [DEFENSE COUNSEL]: That was a doctor's direction from the jail. I *discussed it with our doctor, our confidential doctor, and the confidential*

and the absence of any written documentation from mental health experts stating that the Petitioner was competent.

Accordingly, for all of the reasons set forth above and contained in the petition for writ of certiorari, the Petitioner prays the Court to grant certiorari in this

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doctor did not disagree with it.

(Pet. App. 14a) (emphasis added). In his report, Dr. Rothschild explained that he consulted with William Meadows, Ph.D. – the doctor who conducted the competency evaluations on the Petitioner prior to the plea hearing. (Pet. App. 10a). Dr. Meadows told Dr. Rothschild that he was not aware that the Petitioner's medication had been discontinued prior to the plea hearing (in fact, Dr. Meadows had no knowledge of the Petitioner's medications). (Pet. App. 10a-11a). The State argues that the Petitioner's assertion that Dr. Meadows is the doctor referenced by defense counsel during the plea hearing is "presumptive." (Brief in Opp., p. 13). Yet the State offers no suggestion as to what other doctor defense counsel was referring to (and the record supports the Petitioner's "presumption" in light of the fact that Dr. Meadows was the doctor who conducted the competency evaluations).

case in order to reexamine/reemphasize the procedures that courts must follow before accepting guilty pleas from criminal defendants with mental health issues (i.e., the responsibility of the court to ensure that a criminal defendant is competent prior to entering a guilty plea, what information triggers the requirement that a court order a competency evaluation, etc.). Alternatively, the Petitioner submits that he is entitled to an evidentiary hearing on his postconviction claim that he was not competent at the time of the plea hearing. The Petitioner continues to emphasize that the *only doctor* who has offered an opinion on the issue (Dr. Rothschild) has concluded that the Petitioner's behavior was "incongruent with competence to proceed in court" (and notably, shortly after the Petitioner entered his guilty plea, the Petitioner "was floridly psychotic with disorganized thoughts, hallucinations,

and delusion[al] thinking").

Respectfully Submitted,

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